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The Impact of the Two Dispute Resolution Processes in Negotiations
Les conséquences des mécanismes de solution des conflits

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Résumé de l'article

Au niveau fédéral, les employés régis par la Loi des relations de travail dans la fonction publique, sont obligés d'indiquer, avant de donner la mise en demeure de négocier, s'ils optent pour le recours à l'arbitrage ou pour la conciliation avec droit de grève en vue du règlement du conflit si les négociations aboutissent à une impasse. Pendant la première année d'application de la Loi, (1967-1968), environ quatre-vingts pour cent des employés qui y étaient assujettis ont choisi le recours à l'arbitrage. Par la suite, plusieurs groupements de négociation ont révisé leur option avec le résultat que, au 31 mai 1976, moins du tiers des fonctionnaires fédéraux recouraient encore à l'arbitrage, alors que les autres avaient choisi la conciliation avec droit de grève.

L'analyse théorique des négociations suivant ces deux modes de règlement des conflits indique que le recours à la conciliation avec droit de grève crée une situation où l'on choisit le conflit alors que le recours à l'arbitrage crée une situation où l'on écarte l'idée de conflit. Lorsqu'elles choisissent la situation de conflit, les parties sont disposées à faire des concessions et des compromis, alors que, lorsque l'état de conflit est éliminé, elles peuvent bien se refuser à négocier directement et sérieusement pour en arriver à une entente. En conséquence, il se peut bien que les groupes de négociation qui avaient opté pour le régime de l'arbitrage se soient sentis frustrés dans leurs expériences de négociation et qu'ils se soient orientés vers le régime de conciliation avec l'espoir, à cause de leur droit de faire la grève, de pouvoir négocier librement avec le Conseil du Trésor.

The Impact of the Two Dispute Resolution Processes in Negociations

A.V. Subbarao

This paper attemps to answer the questions as to why the federal public servants alther their options from the arbitration process to the conciliation process.

The Public Service Staff Relations Act of 1967 introduced a system of collective bargaining in the Canadian Federal Public Service which provides for the resolution of a dispute either «(a) by the referral of the dispute to arbitration, or (b) by the referral, thereof, to a conciliation board».[1] In this paper, these two options are called the arbitration process and the conciliation process, respectively. Both these dispute resolution processes provide for the 'finality' of contract negotiations.[2] In the arbitration process, either or both of the negotiating parties may seek the intervention of the arbitration tribunal in the event of their negotiations resulting in an impasse, and the award rendered by the tribunal will be binding on both parties. In the conciliation process, if the parties fail to reach an agreement bilaterally, they can request the assistance of a conciliation board. The board submits a report if it fails to bring about a settlement between the parties and after seven days of receipt of the report, the employees are free to strike.

Every bargaining agent certified under the Act[3] is required to specify one of these two dispute resolution processes before serving notice on the employer to negotiate. The process, once specified, is binding on the bargaining agent and the employer until the contract negotiations are settled. A bargain-

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* I have benefitted from the discussions with Dr. Mario F. Bognanno, Professor and Director of Industrial Relations Center, University of Minnesota, U.S.A. and Dr. Alton Craig, Professor of Industrial Relations, University of Ottawa, Canada.

[1] Public Service Staff in Relations Act, 1967. Section 36(1) (referred hereafter as PSSR Act).

[2] Jacob FINKELMAN «Finality in Public Sector Bargaining: The Canadian Experience», in *Canadian Labour and Industrial Relations*, H.C. Jain (ed.) McGraw-Hill Ryerson Limited, Toronto, 1975, pp. 300-312.

[3] PSSR Act, 1967.

ing agent, however, is allowed to alter its specification of the dispute resolution process one month before commencement of the subsequent round of contract negotiations. These two dispute resolution processes as well as their option to the bargaining agents are some of the unique features of the Canadian Federal Public Service system of collective bargaining.[4]

During the first year of implementation (1967-68) of the Act, federal public servants in only four of the total of fifty-five bargaining units opted for the conciliation process and they constituted about twenty percent of the total employees in the Canadian Federal Public Service.[5] By March 31, 1975, employees in 31 bargaining units constituting over one-third of the total federal public servants opted for the conciliation process.[6] But, by May 31, 1976, over two-thirds of the employees covered under the legislation opted for the conciliations process and less than one-third remained in the arbitration process.[7] This change in the number of employees opting for the arbitration process from about eighty percent during 1967-1968 to less than one third by May 31, 1976 was caused by several bargaining groups who revised their specifications from the arbitration to the conciliation process. These alterations in specification of dispute resolution processes during the first decade of

[4] The Executive order 11491 which governs the employer-employee relations in the U.S. Federal Public Sector prohibits strikes by the federal government employees and permits binding interest arbitration of contract disputes only when the Federal Services Impasses Panel considers it necessary. In the rest of the U.S., public sector, strikes are permitted in only seven states and binding arbitration of contract disputes is allowed in less than half of the states. For a detailed discussion of the dispute resolution processes in the U.S. Public Sector, see, Thomas P. Gilroy and Anthony V. Sinicropi «Impasse Resolutions in Public Employment: A Current Assessment», *Industrial and Labor Relations Review,* Vol. 25 July 1972, pp. 496-511; Anthony V. Sinicropi, and Thomas P. Gilroy «The Legal Framework of Public Sector Dispute Resolution» *The Arbitration Journal,* Vol. 28, March 1973, pp. 1-13 and Robert E. Dunham «Interest Arbitration in Non-Federal Public Employment», *The Arbitration Journal,* Vol. 20, March 1976, pp. 45-57. Strikes and binding interest arbitration of contract disputes are permitted in a number of Provincial jurisdictions in Canada and for details see, Shirley B. Goldenberg «Dispute Settlement Legislation in the Public Sector: An Interprovincial Comparison», in *Canadian Labour and Industrial Relations,* H.C. Jain (ed.), McGraw-Hill Ryerson Limited, Toronto, 1975, pp. 291-299. But the only provincial jurisdiction that provides for these two dispute resolution processes and their option to employees is in New Brunswick. Under the Public Service Labour Relations Act of 1968 in New Brunswick, a bargaining agent has the option to choose between the conciliation process and the arbitration process, at the time when the contract negotiations reach an impasse.

[5] Public Service Staff Relations Board, *First Annual Report* 1967-68. p. 36.

[6] Public Service Staff Relations Board, *Eighth Annual Report* 1974-75, p. 118.

[7] Treasury Board, *Bargaining calendar,* 1975.

implementation of collective bargaining in the Canadian Federal Public Service have attracted the attention of both policy makers and labor relations practitioners.[8] But, there is very little research regarding the impact of these two dispute resolution processes on negotiations and outcomes.[9] Until research is encouraged and the data are available to researchers,[10] the question as to why the federal public servants alter their options from the arbitration process to the conciliation process is likely to remain unanswered and scientific evidence may not be forthcoming.

In this paper, an attempt is made to answer this research question on the basis of a theoretical analysis of the impact of the two dispute resolution processes on negotiations. In the first section of this paper, the two dispute resolution processes are briefly described and the employees' specifications of these two processes are discussed. The second section contains a theoretical analysis on the impact of the arbitration and conciliation processes on negotiations.

DISPUTE RESOLUTION PROCESSES

Irrespective of the dispute resolution process chosen, a bargaining agent and an employer are required to bargain in good faith and to make every reasonable effort to conclude a collective agreement. In order to help bargaining, the Pay Research Bureau[11] provides the

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[8] Jacob FINKELMAN, Chairman of the Public Service Staff Relations Board was appointed to study the functioning of collective bargaining in the Canadian Federal Public Service. He made recommendations in a three-volume report which are being considered by a Special Joint Committee of the Senate and the House of Commons. For details, see L.W.C.S. Barnes and L.S. Kelly «A critical Evaluation of the Joint Parliamentary Report on Employer-Employee Relations in the Federal Public Service», *The Labour Gezette,* May 1976, pp. 256-259.

[9] Interest arbitration in the Canadian Federal Public Service was analyzed in L.W.C.S. BARNES and L.A. KELLY, *Interest Arbitration in the Federal Public Service of Canada,* Research and Current Issues Series No. 31, Queen's University, Kingston: Industrial Relations Centre, 1976, pp. 62 and in A.V. SUBBARO and Adishwar JAIN, *Arbitration of wages in the Public Sector: The Case of the Canadian Federal Public Service,* Working Paper No. 76-25, University of Ottawa, 1976. But a comparative study of these two dispute resolution processes is not so far undertaken.

[10] This researcher would like to see more encouragement from the public sector agencies like the Treasury Board and, the Public Service Staff Relations Board, in terms of openness and availability of data. This researcher's efforts, twice, in the past, were not fruitful in getting cooperation and data from these agencies.

[11] For a detailed discussion of the functioning of the Pay Research Bureau, see Public Service Staff Relations Board, *the Pay Research Bureau,* March 1975.

employer and the bargaining agents engaged in contract negotiations with reports on rates of pay and conditions of employment prevailing at the time of negotiations, both within and outside the federal public service in Canada. If the parties seek and or if the Chairman of the Public Service Staff Relations Board[12] (herein after referred as the Board) considers that the services of a mediator or a conciliator might help the parties in reaching an agreement, the Chairman makes available to the parties such an assistance. If the parties fail to conclude an agreement in spite of these efforts, then they are required to follow different procedures for resolution of disputes in the two processes.

Conciliation Process

In the conciliation process, the bargaining agent or the employer or both may request the Chairman of the Board to appoint a conciliation board for investigation and conciliation of the dispute. Before such a request is made the employer is required to submit a list of employees in the bargaining unit whose services are considered «essential», to the Chairman of the Board who, after considering the objections, if any, of the bargaining agent, determines the list of «designated» employees. Designated employees are those who are not allowed to participate in a strike in the event of a bargaining agent organizing a strike following the breakdown of contract negotiations.

After determination of designated employees, the Chairman of the Board may appoint a conciliation board consisting of three members. The bargaining agent and the employer are each required to nominate a member to the conciliation board and the two members so nominated are required to select a third member who will serve as their chairman. If the parties fail to nominate their representatives and or if the representatives fail to select the third member within the stipulated time, the Chairman of the Board appoints the conciliation board. The Chairman of the Board then sets the terms of reference for the conciliation board which endeavours to bring about an agreement between the parties within fourteen days, after the receipt of the terms of reference or within such a longer period agreed upon by the parties or determined by the Chairman of the Board. Failing to bring an agreement, the conciliation board submits a detailed report of its findings and recommenda-

[12] For a detailed discussion of the structure and functionning of the Public Service Staff Relations Board see A.G. Gillepsie, «Public Service Staff Relations Board», *Relations Industrielles*, Vol. 30 December 1975, pp. 628-41.

tions to the Chairman of the Board who, in turn, provides copies of the report to the parties for consideration.[13]

A conciliation board is prohibited from making any recommendation «concerning the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees».[14] Such a restriction of issues, however, does not exist with regard to bilateral collective negotiations. If the parties fail to settle within seven days after receipt of the conciliation board's report, the bargaining agent is free to declare a legal strike. The parties may, however, negotiate during and after a strike for the purpose of concluding a settlement.

Arbitration Process

In the arbitration process, a bargaining agent has no right to strike. In the event of a failure to conclude an agreement through negotiations, the bargaining agent or the employer or both the parties may request the Chairman of the Board to refer their dispute to arbitration. The Chairman of the Board may do so and appoint an arbitration tribunal consisting of three members for resolving the dispute. Unlike the ad hoc conciliation board consisting of parties' nominees, the arbitration tribunal is appointed by the Chairman of the Board by drawing one member form each of the two permanent panels and one from among the membership of the Board who will be the chairman of the tribunal.[15] The members on the two panels are appointed by the Chairman of the Board for a fixed term specified under the Act, in consultation with the employer and the bargaining agents in the Canadian Federal Public Service. The tribunal renders an award after conducting arbitration proceedings giving opportunity to the parties' representations, and the award will be binding on the parties. Unlike the case of the conciliation board, there is no time limit within which the tribunal is required to render its award. With regard to the scope of arbitration, the tribunal

[13] This is otherwise called the compulsory conciliation process which is an established procedure in the Canadian Private Sector labour relations. The functions of the conciliation board are more or less similar to those of the fact-finders in the U.S. public employment jurisdictions where they are required to submit reports with recommendations.

[14] PSSR Act, 1967. Section 86 (1).

[15] Until the recent amendment to Section 67 of the PSSR Act in October 1975, the permanent chairman or the alternate Chairman of the Public Service Arbitration Tribunal used to be appointed as a Chairman of a tribunal constituted to arbitrate in each separate dispute.

is statutorily restricted and its awards may only « deal with rates of pay, hours of work, leave entitlements, standards of discipline and other terms and conditions of employment directly related thereto ».[16]

In other words, there are significant differences between the two dispute resolution processes. First, the tribunals' awards are binding whereas the conciliation boards' recommendations are voluntary. Second, the coverage of issues is more restricted in awards than in the conciliation boards' recommendations or in the bilateral settlements. Third, a conciliation board is required to submit its report within a stipulated time while there is no such time limit for the tribunal to render its awards. Fourth and final, the parties have an option to nominate their representatives on each separate conciliation board whereas they have no such option in the appointment of an arbitration tribunal.

Dispute Resolution Process Specifications

In spite of these differences between the two dispute resolution processes, a large majority of bargaining agents opted for the arbitration process upon initial certification. Recently, several bargaining groups revised their options from the arbitration to the conciliation process. It is interesting to note that all these alterations took place among the 'central administration' employees who constitute about ninety-nine percent of the Canadian Federal Public servants.[17]

Employees of the central administration are classified into five major occupational categories, namely, the scientific and professional; administrative and foreign service; technical; administrative support and operational.[18] Each category, in turn, has a number of occupational groups and, in most cases, employees in an occupational group constitute members of a bargaining unit. With respect to each bargaining unit, a bargaining agent is certified. All bargaining agents representing central administration employees negotiate with only one employer, namely, the Treasury Board. The Treasury Board is the single employer and is the chief spokesman of Her Majesty in the right of Canada.[19]

Different bargaining agents negotiating with the 'single employer' might have had different bargaining experiences which might have

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[16] PSSR Act, 1967 Section 70 (1).

[17] Public Service Staff Relations Board, *Eighth Annual Report 1974-75*. pp. 110-114.

[18] PSSR Act, 1967. Section 2.

[19] PSSR Act, 1967. Section 2.

influenced their recent changes in specification of the dispute resolution process. Hence, the dispute resolution process specifications of central administration employees are discussed, first, in terms of their distribution in the five occupational categories and, second, in terms of their representation by different bargaining agents.

The bargaining groups that opted for the conciliation process upon initial certification were originally confined to the technical and operational categories.[20] In the technical category, The Air Traffic Controllers (2,164 employees) and the Electronics (2,917 employees) groups specified the conciliation process in 1967 and 1969, respectively. Among those groups in the operational category that opted for the conciliation process during 1967-68, the two Postal Operations groups (19,278 inside workers and 16,702 outside workers) are the most significant and they both hold considerable bargaining power.[21]

Between 1971 and 1975, several bargaining groups altered their dispute resolution process specifications.[22] Among them, alterations from the arbitration to the conciliation process by three groups were the most significant changes, so far made, in the Canadian Federal Public Service. These are the General Labour and Trades; the Clerical and Regulatory and the Program Administration Groups. The General Labour and Trade groups (15,809 non-supervisory and 3,114 supervisory workers) of the operational category revised their specification of the dispute resolution process in 1971. The Clerical and Regulatory Group (46,406 employees) of the administrative support category and the Program Administration group (20,715 employees) of the administrative and foreign service category altered their specifications from the arbitration to the conciliation process, respectively, on September 5, 1975 and on October 10, 1975.

As a result of these alterations, the percentage of employees that opted for conciliation in each of these three occupational categories (shown in Table 1) is more than that which have chosen arbitration as the dispute resolution process. It is important to note in Table 1 that

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[20] Treasury Board, *Bargaining calendar,* 1975

[21] There was no surprise in postal operations groups opting for the conciliation process with the right to strike because they demanded, during their presentations before the Joint Parliamentary Committee in 1966, for inclusion of the right to strike, in the proposed legislation. In fact, the Preparatory Committee on Collective Bargaining in the Public Service which was appointed by the Government of Canada in 1965 to study and report on the proposed legislation, recommended only binding arbitration as a dispute resolution process. See Barnes and Kelly, *Interest Arbitration in the Federal Public Service of Canada,* 1976, p. 5.

TABLE I

Distribution of organized federal public employees by occupational category and dispute resolution process as of may 31, 1976

Occupational category	*Arbitration process*			*Conciliation (strike) process*		
	Percentage	*No. of bargaining units*	*Average no. of employees per unit*	*Percentage*	*No. of bargaining units*	*Average no. of employees per unit*
Scientific and professional	5.38	20	654	2.95	8	896
Administrative and foreign service	5.69	8	1731	8.84	2	10253
Technical	6.22	7	2162	3.84	6	1556
Administrative support	5.54	3	4495	20.56	3	16702
Operational	10.98	13	2055	30.00	11	6638
Total	33.81	51	1613	66.19	30	5369

SOURCE: Treasury Board. *Bargaining calendar, 1976*

the average size of a bargaining unit in the conciliation process is more than three times that in the arbitration process. This is because the large bargaining groups revised their options from the arbitration process to the conciliation process.

Since the bargaining groups that opted for the conciliation process have the right to strike, they could not only threaten but could also organize a strike, if such an action is considered warranted during contract negotiations with the Treasury Board. Some of the bargaining agents (See in Table 2), that represent employees in the conciliation process did in fact organize strikes in the past.[22] The Public Service Alliance of Canada which represents employee groups in both dispute resolution processes organized a strike, for the first time, in 1975.[23] The alterations of dispute resolution processes and the actual organizing of strikes by some bargaining agents in the Canadian Federal Public Service indicate that, perhaps, the employee organizations recognized the important differences discussed below between contract negotiations with the right to strike and those without the right to strike. In the following section, a theoretical analysis of differences in negotiations between these two dispute resolution processes is developed drawing upon the general theories of negotiations and bargaining.

THEORETICAL ANALYSIS OF NEGOTIATIONS

Bilateral negotiation is a process involving the exchange of information between two parties. The purpose or intent of negotiations is to arrive at and to sign an agreement of understanding. But, when the parties involved in negotiations have opposing preferences, they are in direct conflict with one another and the negotiations are prolonged. In contract negotiations, labor and management are in conflict. Labor is interested in securing a settlement which it considers most acceptable to its membership and its leadership. Such a settlement may result in increased costs to the employer, who, in turn, is interested in negotiating an agreement involving the minimum labor costs to the organization. In such a conflict situation, the union may use the « threat

[22] Treasury Board, *Bargaining calendar*, 1975.

[23] Since 1967, there were 12 legal strikes in the Canadian Federal Public Service. For details, see Treasury Board, *Bargaining Calendar*, 1975. Of those twelve, postal operations groups organized a twenty one day strike in 1968, a rotating strike in 1970, and a seven week strike in 1975. In 1972, Air Traffic control group called a strike. For details also see J. Finkelman *Employer-Employee Relations in the Public Service*, 1976. p. 124.

TABLE 2

Representation or organized federal public employees by dispute resolution process as of may 31, 1976

Bargaining agent	*Arbitration process*		*Conciliation process*		
	No. of bargaining units	*Percentage of total*	*No. of bargaining units*	*Percentage of total*	*Percentage of total*
Public Service Alliance of Canada (PSAC)	27	25.73	14	42.25	57.98
Professional Institute of The Public Service (PIPS)	20	4.71	9	2.13	6.84
Canadian Union of Postal Workers (CUPW)	—	—	1	7.92	7.92
Letter Carrier Union of Canada (LCUC)	—	—	1	6.86	6.86
Canadian Postmasters Association (CPA)	—	—	1	3.37	3.37
Association of Postal Official of Canada (APOC)	1	1.48	—	—	1.48
Local 2228, International Brotherhood of Electrical Workers (IBEW)	—	—	1	1.20	1.20
Federal Government Dockyards Trades and Labour Council (DTLC)	—	—	1	1.07	1.07
Canadian Airtraffic Control Association (CATCA)	—	—	1	0.89	0.89
Economists, Sociologists and Statisticians Associations (ESSA)	1	1.0	—	—	1.0
Canadian Merchant Service Guild (CMSG)	1	0.50			0.50
Council of Graphic Arts Unions of The Public Service of Canada (CGAU)	—	—	1	0.50	0.50
Professional Association of The Foreign Service Officers (PAFSO)	1	0.39	—	—	0.39
Total	51	33.81	30	66.19	100

Source: Treasury Board, *Bargaining calendar, 1976*

of strike» tactic in order to cause management to make an offer closer to the union's preferred position. Faced with such a threat, the management is in a conflict — choice situation of either rejecting the union's demand and accepting a strike or accepting the union demand and increasing the cost to the organization. When the union threatens to strike, it, too, is in a conflict-choice situation of either striking and incurring the related costs or accepting the management's offer and incurring the «loss» of difference between its demand and the employer's offer.

When bilateral parties are in such a conflict-choice situation, Stevens[24] suggests that the union and the management representratives may negotiate to seek a compromise settlement. In other words, the right to workstoppage permits the union to use the bargaining tactic, the 'threat to strike', which creates a conflict-choice situation for both negotiators. However, the denial of the right to strike may create a non-conflict-choice situation which may subvert negotiations. In the arbitration process, the parties have the right to arbitrate and while they do not have the «threat to strike» they may use the «threat of arbitration». But, the behavioral question that needs to be answered is whether the 'threat of arbitration' would create a conflict-choice situation to bilateral negotiators motivating them to negotiate freely towards a bilateral settlement.

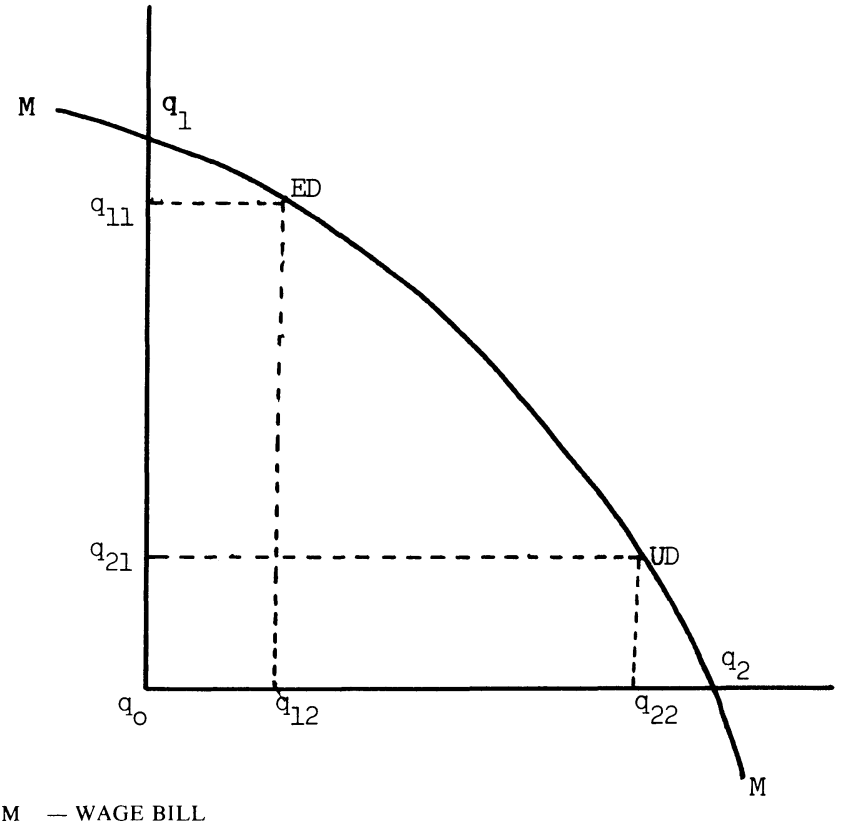
A theoretical analysis applied to negotiations in the Canadian Federal Public Service is developed using annual wage increase as a sole bargaining issue. It is assumed that for a given contract period, the Treasury Board estimates a «wage bill» out of which wage increases will be negotiated and settled with all the bargaining agents. It is also assumed that the purpose of negotiations for *each bargaining agent* is to negotiate not only for a large share of the wage bill but also for *increasing the wage bill* so that more money will be left for it and/or other bargaining agents. And, for the Treasury Board the purpose is to negotiate as small a part of the wage bill as possible with a particular *bargaining agent* representing a bargaining unit so that a larger share of it will be available for negotiations with respect to other bargaining units.

Following the analogy of the utility maximization function of the bilateral negotiators, the Treasury Board (herein after referred as the employer) and a particular bargaining agent representing a bargaining

[24] C.M. STEVENS, «On the Theory of Negotiations». *Quaterly Journal of Economics*, Vol. LXXII, February 1958, pp. 77-97.

unit (herein after referred as the union) are expected to attempt to maximize their utilities along q_1 and q_2, respectively, (see Figure 1) on the utility frontier 'M' which, in this case, is the total wage bill. If the union demands q_2 a sum equal to 'M' and/or if the employer prefers to keep q_1 for negotiations with respect to other bargaining units, they are fated to remain deadlocked. In such a situation, either of the parties will have to give in completely to the opponent for a settlement to take place and it is very unlikely to happen. More realistically, the bargainers are visualized as confronting one another with some rather initially extreme positions, UD and ED, respectively. At UD on the utility

FIGURE 1



M — WAGE BILL
UD — UNION'S INITIAL POSITION
ED — EMPLOYER'S INITIAL POSITION
q_0q_2 UNION'S INITIAL POSITION
q_0q_1 — EMPLOYER'S UTILITY SCALE

frontier 'M', the union demands to receive for its membership the entire wage bill less the amount equal to the utility space q_{22},q_2, and UD. Similarly, at ED, the employer prefers to keep for the purpose of negotiations relating to other bargaining units the entire wage bill less the amount equal to the utility space q_{11},q_1 and ED.

At its initiale position UD, the union expects to receive q_{22} utilities for itself on the q_0q_2 utility scale, with the employer getting only q_{21} on the employer's utility scale (q_0q_1). At its initial position ED, the employer expects to receive q_{11} utilities for itself, with the union getting only q_{12} on the union's utility scale. When the parties face such a situation, they have three alternatives open, namely:

1. to accept the others position and avoid conflict;
2. to concede marginally off of one's own position and hopefully avoid conflict; and
3. to stick to one's own position and risk conflict.

A party's selection of the option may be influenced by the dispute resolution process the bargaining agent has selected before the commencement of contract negotiations. Analysis of negotiations in the conciliation process will be discussed first and the discussion of negotiations in the arbitration process will follow.

Analysis of Negotiations With The Right To Strike

In the conciliation process, since the union has the right to strike, it can impose a cost of disagreement on the employer.[25] Given the assumption, Zeuthen's theory,[26] discussed below, goes far to explain whether or not either party will concede to the demand of the other by introducing the concept of a subjective probability of conflict. According to Zeuthen, the maximum subjective probability of conflict (c_1) the union would be willing to endure in order to hold its position at UD and the maximum subjective probability of conflict (c_2) the employer would be willing to endure in order to hold its position at ED — are derived as follows:

I. The union would receive q_{12} with certainty if it conceded to the employer's terms and it would receive q_{22} $(1-c_1)$ if it maintained its

[25] Neil W. CHAMBERLAIN and James W. KUHN, *Collective Bargaining* (Second Edition) New York: McGraw-Hill Book Company, 1965, p. 173.

[26] F. ZEUTHEN, *Problems of Monopoly and Economic Warfare*, London: G. Routledge and Sons, 1930, 152, pp.

own position, where c_1 is the trade union's subjective probability estimate that the employer will not accept its terms. Accordingly:

(a) if $q_{12} < q_{22}\ (1-c_1)$, the union will stand firm since the expected gain from doing so is greater than the expected gain associated with a concession; and

(b) if $q_{12} \geq q_{22}\ (1-c_1)$, then the union will concede.

Using (a) and/or (b) above to solve for c_1 it is relatively simple to derive the maximum subjective probability of conflict that the union would be willing to accept —

$$c_1 = \frac{q_{22} - q_{12}}{q_{22}}$$

II. The employer would receive q_{21} with certainty if it conceded to the union's terms and it would receive $q_{11}\ (1-c_2)$ if it maintained its own position, where c_2 is the employer's subjective probability estimate that the union will not accept its terms. Accordingly:

(a) if $q_{21} < (1-c_2)$, then the employer would stand firm since the expected gain from doing so is greater than the expected gain associated with a concession; and

(b) if $q_{21} \geq q_{11}\ (1-c_2)$, then the employer will concede.

Using (a) and/or (b) above for c_2 it is relatively simple to derive the maximum subjective probability of conflict that the employer would be willing to accept —

$$c_2 = \frac{q_{11} - q_{21}}{q_{11}}$$

Zeuthen theorized if $c_1 < c_2$, then the union would be observed conceding; whereas, if $c_2 < c_1$, then the employer would be observed conceding. Both parties would concede when $c_2 = c_1$, until the $(q_{11}q_{21}) = (q_{12}q_{22})$ at which point they may settle. Based on this concept of the subjective probability of conflict, Pen[27] developed a theory of bargaining in which he, too, analyzed the parties' concessionary behavior during bilateral negotiations. Bishop,[28] also, developed a composite theory of bargaining by combining Zeuthen's concept of the subjective

[27] J. PEN «A General Theory of Bargaining». *American Economic Review,* Vol. XLII, March 1952, pp. 24-42.

[28] R.L. BISHOP «A Zeuthens-Hicks Theory of Bargaining». *Econometrica,* Vol. 32 July 1964, pp. 410-417.

probability of conflict and Hicks'[29] concepts of the time dimensions of conflicts and agreements. Like c_1 and c_2 in Zeuthen's theory, s_1 and s_2 in the composite theory are used to explain the bilateral negotiators' concessionary behavior, where s_1 is the maximum length of strike the union would be willing to sustain in order to hold to its position of UD and s_2 is the maximum length of strike the employer would be willing to withstand in order to hold to its position of ED.

Most of these bargaining theories are based on the assumption that the « threat of workstoppage » creates a conflict-choice situation to both the employer and the union engaged in bilateral negotiations. In conflict-choice situations, Stevens[30] states that the parties tend to avoid both negative goals (i.e., conceding to the opponent or maintaining a rigid position and potentially causing a breakdown in relations) and prefer to pursue a compromise solution. In the public sector collective bargaining also, the threat of a strike may create a conflict-choice situation in which the parties may be motivated to concede and compromise rather than face the consequence of going without salaries from the union's point of view or employees' services to the public from the employer's point of view.

Analysis of Negotiations Without the Right to Strike

In the arbitration process, the 'threat of arbitration' may create a 'conflict-choice' situation provided that it has the same or somewhat similar effect on the negotiators as the « threat of strike ». *If* the 'threat of arbitration' does not impose a cost on the opponent and *if* the opponent does not expect a serious risk, a conflict-choice situation may not be created. The cost of arbitration to a party is the difference between its position and the expected award. The greater the 'uncertainty' of the award in an arbitration system, the larger is likely to be the expected cost of arbitration to a party. According to Stevens[31], the difference between the party's position and its expected award is more likely to influence negotiations than the mere 'threat of arbitration' by the opponent. In other words, in an arbitration system in which the award is 'uncertain', the « threat of arbitration » like the 'threat of strike' may create a conflict-choice situation.

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[29] J.B. HICKS *The Theory of Wages* (Second Edition) London: MacMillian and Co. 1963 338 pp.

[30] C.M. STEVENS, « On the Theory of Negotiations ». *Quaterly Journal of Economics*, Vol. LXXII, February 1958, pp. 77-97.

[31] C.M. STEVENS: « Is Compulsory Arbitration Compatible with Bargaining ». *Industrial Relations*, Vol. 5, No. 2, February 1966, 38-52.

The arbitration system in the Canadian Federal Public Service is similar to what is sometimes called the conventional system of binding interest arbitration in which the arbitrators more or less split the difference between the parties.[32] In such a system, the arbitral award is more or less 'certain'. A union which demands initially q_{22} and is offered q_{12} (see Figure 1) can expect to receive an award more or less equal to $\frac{(q_{22} - q_{12})}{2}$. Similarly, the employer demanding q_{11} and offered q_{21} can expect to receive an award equivalent to $\frac{(q_{11} - q_{21})}{2}$. In other words, the 'certainty' of award may create a non-conflict-choice situation in which the parties may not be motivated to negotiate (i.e. concede and compromise) for the purpose of reaching an agreement.

However, in the arbitration process, the Treasury Board and some bargaining agents may have reached agreements during contract negotiations. They may have settled because of the pattern bargaining which may have been practiced by the two bargaining agents that represent employee groups in both the dispute resolution process (see Table 2). The Public Service Alliance of Canada and the Professional Institute of Public Service may have relied upon their settlements in the conciliation process as patterns during contract negotiations in the arbitration process. The Treasury Board which is a party to settlements in the conciliation process may have yielded to some bargaining agents' demands based on intraoccupational comparisons within the Canadian Federal Public Service. Such settlements based on pattern bargaining may have frustrated some bargaining groups who, perhaps, on realization of their bargaining power may have revised their options from the arbitration process to the conciliation process.

CONCLUSIONS

The theoretical analysis indicates that there are significant differences in negotiations between the two dispute resolution processes.

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[32] Gary LONG, and Peter FEUILLE «Final-Offer Arbitration: 'Sudden Death' in Eugene» *Industrial and Labor Relations Review,* Vol. 27 January 1974, pp. 186-203.

[33] Research evidence indicates that the conventional binding and compulsory interest arbitration has a 'chilling' and 'narcotic' effect on bilateral negotiations. See Peter FEUILLE, «Final Offer Arbitration and the Chilling Effect», *Industrial Relations,* Vol. 14, October 1975, pp. 302-310 and Hoyt WHEELER, «Compulsory Arbitration: A 'Narcotic Effect'?». *Industrial Relations,* Vol. 14, February 1975, pp. 117-120.

With the 'threat of strike' the employee organizations that opted for the conciliation process, perhaps, are able to negotiate 'freely' with the Treasury Board. During negotiations, the Treasury Board may be conceding to those unions that threaten to strike. With the result, a large portion of the 'wage bill' may be committed to the employee groups in the conciliation process. The employee groups that opted for the arbitration process may be left with a relatively small portion of the 'wage bill'. Their efforts to increase the size of the 'wage bill' may not be successful with the Treasury Board. Since these employee groups are prohibited to strike and can only seek arbitration, the Treasury Board may adopt a bargaining strategy of offering as little as possible and may make very few concessions during negotiations. As a result, negotiations may end in a stalemate and the parties may seek arbitration.

If the arbitration tribunal renders an award contrary to the expectations of the union and if such an award affects the interests of its membership,[34] the union is likely to be frustrated and may blame the tribunal for the outcome. With the result, a union which can strike with impunity[35] against a public employer may be able to convince its membership to revise their option from the arbitration process to the conciliation process.

These theoretical differences in impact on negotiations between the two dispute resolution processes need to be tested in terms of actual

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[34] In its decisions, the tribunal seems to be attempting to hold the wage levels in the Canadian Federal Public Service. Such decisions may go not only against the expectations of the unions but also against the interests of the employees that opted for the arbitration process. For example, in a wage dispute between the Treasury Board and the Physical Sciences Group in the Scientific and Professional Category, the Arbitration Tribunal was not only influenced by the guidelines set in the Canadian Federal Government's Anti-Inflation Act of 1975 but also adhered, according to its own following statement, to the trends in the Anti-Inflation Board's decisions:

> «This Board (tribunal) is in no position to determine... the maximum permissible increase in salary compensation. The fact is that the AIB requires the calculation to be made in a manner shown by the Treasury Board and that this method of determining the maximum permissible increase in compensation has been applied in all disputes coming before the Arbitration Tribunals of the Public Service Staff relations Board. It would be unwise for this Board to vary that approach in the instant case».

For details, see File No. 185-2.132 of the Public Service Staff Relations Board in which the instant award, issued on October 21, 1976, was recorded.

[35] In an analysis of arbitration of wages disputes in the U.S. private sector between 1945 and 1950, Bernstein concluded that powerful organizations that strike with impunity seldom employ the arbitration process. See Irving BERNSTEIN, *Arbitration of Wages,* Berkeley and Los Angeles: University of California Press, 1956, p. 16.

collective bargaining in the Canadian Federal Public Service. If such tests confirm this theoretical analysis, those results may be of use to the policy makers who may want to legislate the dispute resolution processes that would be more compatible with free collective bargaining than those existing now under the Public Service Staff Relations Act. Stevens states that the final-offer-selection system of binding interest arbitration may create a conflict-choice situation and hence, it may be compatible with free collective bargaining.[36]

Les conséquences du mécanisme de solution des conflits

Au niveau fédéral, les employés régis par la Loi des relations de travail dans la fonction publique, sont obligés d'indiquer, avant de donner la mise en demeure de négocier, s'ils optent pour le recours à l'arbitrage ou pour la conciliation avec droit de grève en vue du règlement du conflit si les négociations aboutissent à une impasse. Pendant la première année d'application de la Loi, (1967-1968), environ quatre-vingts pour cent des employés qui y étaient assujettis ont choisi le recours à l'arbitrage. Par la suite, plusieurs groupements de négociation ont révisé leur option avec le résultat que, au 31 mai 1976, moins du tiers des fonctionnaires fédéraux recouraient encore à l'arbitrage, alors que les autres avaient choisi la conciliation avec droit de grève.

L'analyse théorique des négociations suivant ces deux modes de règlement des conflits indique que le recours à la conciliation avec droit de grève crée une situation où l'on choisit le conflit alors que le recours à l'arbitrage crée une situation où l'on écarte l'idée de conflit. Lorsqu'elles choisissent la situation de conflit, les parties sont disposées à faire des concessions et des compromis, alors que, lorsque l'état de conflit est éliminé, elles peuvent bien se refuser à négocier directement et sérieusement pour en arriver à une entente. En conséquence, il se peut bien que les groupes de négociation qui avaient opté pour le régime de l'arbitrage se soient sentis frustrés dans leurs expériences de négociation et qu'ils se soient orientés vers le régime de conciliation avec l'espoir, à cause de leur droit de faire la grève, de pouvoir négocier librement avec le Conseil du Trésor.

[36] C.M. STEVENS, « Is compulsory Arbitration compatible with bargaining ». p. 46.